

CENTER FOR DISABILITY ACCESS
Chris Carson, Esq., SBN 280048
Dennis Price, Esq., SBN 279082
Amanda Seabock, Esq., SBN 289900
Mail: PO Box 262490
San Diego, CA 92196-2490
Delivery: 9845 Erma Road, Suite 300
San Diego, CA 92131
(858) 375-7385; (888) 422-5191 fax
phylg@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

v.

AMAJ, LLC, a California Limited
Liability Company;
Horizon Concept, Inc., a California
Corporation; and Does 1-10,
Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of AMAJ, LLC, a California Limited Liability Company; Horizon Concept, Inc., a California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant AMAJ, LLC owned the real property located at or about

1 1378 Oakland Rd., San Jose, California, in October 2018.

2 3. Defendant AMAJ, LLC owned the real property located at or about
3 1378 Oakland Rd., , San Jose, California, in December 2018.

4 4. Defendant AMAJ, LLC owns the real property located at or about 1378
5 Oakland Rd., San Jose, California, currently.

6 5. Defendant Horizon Concept, Inc. owned Alura Inn located at or about
7 1378 Oakland Rd., San Jose, California, in October 2018.

8 6. Defendant Horizon Concept, Inc. owned Alura Inn located at or about
9 1378 Oakland Rd., San Jose, California, in December 2018.

10 7. Defendant Horizon Concept, Inc. owns Alura Inn (“Motel”) located at
11 or about 1378 Oakland Rd., San Jose, California, currently.

12 8. Plaintiff does not know the true names of Defendants, their business
13 capacities, their ownership connection to the property and business, or their
14 relative responsibilities in causing the access violations herein complained of,
15 and alleges a joint venture and common enterprise by all such Defendants.
16 Plaintiff is informed and believes that each of the Defendants herein,
17 including Does 1 through 10, inclusive, is responsible in some capacity for the
18 events herein alleged, or is a necessary party for obtaining appropriate relief.
19 Plaintiff will seek leave to amend when the true names, capacities,
20 connections, and responsibilities of the Defendants and Does 1 through 10,
21 inclusive, are ascertained.

22
23 **JURISDICTION & VENUE:**

24 9. The Court has subject matter jurisdiction over the action pursuant to 28
25 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
26 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

27 10. Pursuant to supplemental jurisdiction, an attendant and related cause
28 of action, arising from the same nucleus of operative facts and arising out of

1 the same transactions, is also brought under California's Unruh Civil Rights
2 Act, which act expressly incorporates the Americans with Disabilities Act.

3 11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
4 founded on the fact that the real property which is the subject of this action is
5 located in this district and that Plaintiff's cause of action arose in this district.

6
7 **FACTUAL ALLEGATIONS:**

8 12. Plaintiff went to the Motel in October 2018 and December 2018 with
9 the intention to avail himself of its goods or services, motivated in part to
10 determine if the defendants comply with the disability access laws.

11 13. The Motel is a facility open to the public, a place of public
12 accommodation, and a business establishment.

13 14. Guest rooms are one of the facilities, privileges, and advantages offered
14 by Defendants to patrons of the Motel.

15 15. Defendants did not offer persons with disabilities with a range of
16 options equivalent to other customers during plaintiff's visits. The required
17 accessible rooms were not dispersed among the various classes of sleeping
18 accommodations available to patrons, including with respect to the number of
19 beds provided.

20 16. Plaintiff needed two beds—one for himself and one for his aide, who
21 assists him.

22 17. Additionally, the Motel's website did not allow customers to book
23 accessible guest rooms online.

24 18. Currently, Defendants do not offer persons with disabilities with a range
25 of options equivalent to other customers. The required accessible rooms are
26 not dispersed among the various classes of sleeping accommodations
27 available to patrons, including with respect to the number of beds provided.

28 19. Currently, the Motel's website does not allow customers to book

1 accessible guest rooms online.

2 20. Parking spaces are another one of the facilities, privileges, and
3 advantages offered by Defendants to patrons of the Motel.

4 21. Unfortunately, even though there were parking spaces marked and
5 reserved for persons with disabilities in the parking lot serving the Motel
6 during Plaintiff's visits, the parking spaces were not van accessible.

7 22. The parking stalls measured about 96 inches in width while the access
8 aisles measured about 60 inches in width. These are not van accessible.

9 23. On information and belief, Plaintiff alleges that the defendants once
10 had van parking space marked and reserved for persons with disabilities at the
11 Motel. Unfortunately, the van parking space was allowed to fade or get paved
12 over.

13 24. In addition to not having a van-accessible parking space for persons with
14 disabilities, the parking stalls and access aisle were not level with each other
15 because there were built up curb ramps running into the access aisles.

16 25. These curb ramps caused slopes greater than 2.1%.

17 26. Currently, there is no van-accessible parking space.

18 27. Currently, the parking stalls and access aisles are not level with each
19 other.

20 28. Transaction counters are also one of the facilities, privileges, and
21 advantages offered by Defendants to patrons of the Motel.

22 29. Unfortunately, the transaction counter at the Motel was more than 36
23 inches in height. In fact, the transaction counter was about 50 inches in height.

24 30. There was no lowered, 36 inch portion of the transaction counter at the
25 Motel for use by persons in wheelchairs to conduct transactions. In fact, the
26 transaction counter was about 50 inches high.

27 31. Currently, the transaction counter at the Motel is more than 36 inches
28 in height.

1 32. Currently, there is no lowered, 36 inch portion of the transaction
2 counter at the Motel for use by persons in wheelchairs.

3 33. Defendants have failed to maintain in operable working condition those
4 features of facilities and equipment that are required to be readily accessible to
5 and usable by persons with disabilities at the Subject Property.

6 34. Plaintiff personally encountered these barriers.

7 35. This inaccessible facility denied the plaintiff full and equal access and
8 caused him difficulty.

9 36. The defendants have failed to maintain in working and useable
10 conditions those features required to provide ready access to persons with
11 disabilities.

12 37. The barriers identified above are easily removed without much
13 difficulty or expense. They are the types of barriers identified by the
14 Department of Justice as presumably readily achievable to remove and, in fact,
15 these barriers are readily achievable to remove. Moreover, there are numerous
16 alternative accommodations that could be made to provide a greater level of
17 access if complete removal were not achievable.

18 38. For example, there are numerous paint/stripe companies that will come
19 and stripe a level, van-accessible parking stall and access aisle and install
20 proper signage on rapid notice, with very modest expense, sometimes as low
21 as \$300 in full compliance with federal and state access standards.

22 39. A common barrier removal project is modifying transaction counters to
23 make a portion of the counter accessible. This is a simple construction task,
24 well within the capabilities of any general contractor. The task can be
25 completed easily and for a modest price.

26 40. Plaintiff will return to the Motel to avail himself of its goods or services
27 and to determine compliance with the disability access laws. He is currently
28 deterred from doing so because of his knowledge of the existing barriers. If the

1 barriers are not removed, the plaintiff will face unlawful and discriminatory
2 barriers again.

3 41. Given the obvious and blatant nature of the barriers and violations
4 alleged herein, the plaintiff alleges, on information and belief, that there are
5 other violations and barriers on the site that relate to his disability. Plaintiff will
6 amend the complaint, to provide proper notice regarding the scope of this
7 lawsuit, once he conducts a site inspection. However, please be on notice that
8 the plaintiff seeks to have all barriers related to his disability remedied. See
9 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
10 encounters one barrier at a site, he can sue to have all barriers that relate to his
11 disability removed regardless of whether he personally encountered them).

12
13 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
14 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
15 Defendants.) (42 U.S.C. section 12101, et seq.)

16 42. Plaintiff re-pleads and incorporates by reference, as if fully set forth
17 again herein, the allegations contained in all prior paragraphs of this
18 complaint.

19 43. Under the ADA, it is an act of discrimination to fail to ensure that the
20 privileges, advantages, accommodations, facilities, goods and services of any
21 place of public accommodation is offered on a full and equal basis by anyone
22 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
23 § 12182(a). Discrimination is defined, inter alia, as follows:

- 24 a. A failure to make reasonable modifications in policies, practices,
25 or procedures, when such modifications are necessary to afford
26 goods, services, facilities, privileges, advantages, or
27 accommodations to individuals with disabilities, unless the
28 accommodation would work a fundamental alteration of those

1 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

2 b. A failure to remove architectural barriers where such removal is
3 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
4 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
5 Appendix “D.”

6 c. A failure to make alterations in such a manner that, to the
7 maximum extent feasible, the altered portions of the facility are
8 readily accessible to and usable by individuals with disabilities,
9 including individuals who use wheelchairs or to ensure that, to the
10 maximum extent feasible, the path of travel to the altered area and
11 the bathrooms, telephones, and drinking fountains serving the
12 altered area, are readily accessible to and usable by individuals
13 with disabilities. 42 U.S.C. § 12183(a)(2).

14 44. Under the ADA, a hotel must provide persons with disabilities a range of
15 options equivalent to those available to other persons served by the facility.
16 Sleeping rooms and suites required to be accessible must be dispersed among
17 the various classes of sleeping accommodations available to patrons of the
18 hotel and this takes into account the number of beds provided.

19 45. Here, the failure to provide a range of options equivalent to those
20 available to other persons served by the facility is discriminatory and a
21 violation.

22 46. Under the ADA, public accommodations that own or operate a place of
23 lodging have an obligation to “ensure that individuals with disabilities can
24 make reservations for accessible guest rooms during the same hours and in the
25 same manner as individuals who do not need accessible rooms.” 28 C.F.R. §
26 36.302(e)(1)(i).

27 47. Here, the Motel’s failure to provide disabled individuals the ability to
28 book accessible guestrooms online through their website, like non-disabled

1 individuals, is a violation ADA.

2 48. Any business that provides parking spaces must provide accessible
3 parking spaces. 2010 Standards § 208. Under the 2010 Standards, one in
4 every six accessible parking spaces must be van accessible. 2010 Standards §
5 208.2.4.

6 49. Here, the lack of a van parking space is a violation of the law.

7 50. Under the 2010 Standards, access aisles shall be at the same level as the
8 parking spaces they serve. Changes in level are not permitted. 2010 Standards
9 502.4. "Access aisle are required to be nearly level in all directions to provide
10 a surface for wheelchair transfer to and from vehicles." 2010 Standards §
11 502.4 Advisory. Specifically, built up curb ramps are not permitted to project
12 into access aisles and parking spaces. *Id.* No more than a 1:48 slope is
13 permitted. 2010 Standards § 502.4.

14 51. Here, the failure to provide level parking is a violation of the law.

15 52. Under the 2010 Standards, where the approach to the sales or service
16 counter is a parallel approach, such as in this case, there must be a portion of
17 the sales counter that is no higher than 36 inches above the floor and 36 inches
18 in width and must extend the same depth as the rest of the sales or service
19 counter top. 2010 Standards § 904.4 & 904.4.1.

20 53. Here, no such accessible counter has been provided in violation of the
21 ADA.

22 54. The Safe Harbor provisions of the 2010 Standards are not applicable
23 here because the conditions challenged in this lawsuit do not comply with the
24 1991 Standards.

25 55. A public accommodation must maintain in operable working condition
26 those features of its facilities and equipment that are required to be readily
27 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

28 56. Here, the failure to ensure that the accessible facilities were available

1 and ready to be used by the plaintiff is a violation of the law.

2
3 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
4 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
5 Code § 51-53.)

6 57. Plaintiff repleads and incorporates by reference, as if fully set forth
7 again herein, the allegations contained in all prior paragraphs of this
8 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
9 that persons with disabilities are entitled to full and equal accommodations,
10 advantages, facilities, privileges, or services in all business establishment of
11 every kind whatsoever within the jurisdiction of the State of California. Cal.
12 Civ. Code §51(b).

13 58. The Unruh Act provides that a violation of the ADA is a violation of the
14 Unruh Act. Cal. Civ. Code, § 51(f).

15 59. Defendants’ acts and omissions, as herein alleged, have violated the
16 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
17 rights to full and equal use of the accommodations, advantages, facilities,
18 privileges, or services offered.

19 60. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
20 discomfort or embarrassment for the plaintiff, the defendants are also each
21 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
22 (c).)

23 61. Although the plaintiff was markedly frustrated by facing discriminatory
24 barriers, even manifesting itself with minor and fleeting physical symptoms,
25 the plaintiff does not value this very modest physical personal injury greater
26 than the amount of the statutory damages.

1 **PRAYER:**

2 Wherefore, Plaintiff prays that this Court award damages and provide
3 relief as follows:

4 1. For injunctive relief, compelling Defendants to comply with the
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
6 plaintiff is not invoking section 55 of the California Civil Code and is not
7 seeking injunctive relief under the Disabled Persons Act at all.

8 2. Damages under the Unruh Civil Rights Act, which provides for actual
9 damages and a statutory minimum of \$4,000 for each offense.

10 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
11 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

12
13 Dated: January 7, 2019

CENTER FOR DISABILITY ACCESS

14
15
16 By:



17
18 Chris Carson, Esq.
19 Attorney for plaintiff
20
21
22
23
24
25
26
27
28